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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **LOS ANGELES DIVISION**

11 IN RE:

12 WILLIAM K. SPENCER,

13 Debtor.

14  
15 GWENDOLYN NOLAN,

16 Plaintiff,

17 vs.

18 WILLIAM K. SPENCER,

19 Defendant.

Case No.: 2:20-bk-10401-BB

Adv. Case. No: 2:20-ap-01103-BB

**PLAINTIFFS' MEMORANDUM OF  
CONTENTIONS OF FACT AND LAW**

**PRE-TRIAL CONFERENCE**

**Date:** February 23, 2021

**Time:** 2:00 p.m.

**Place:** 255 East Temple Street,  
Los Angeles, California,  
Courtroom 1539

22  
23 **I. PLAINTIFFS' CLAIMS**

24 **A. Summary of Claims Plaintiff Plans to Pursue**

25  
26 Plaintiff's (Gwendolyn Nolan") complaint stated one claim against Defendant  
27 William K. Spencer ("Defendant") to declare the debt owed to her by Defendant non-  
28

1 dischargeable pursuant to 11 U.S.C. § 523(a)(2) and Bankruptcy Rule 4007. On February 2,  
2 2021, Defendant moved to dismiss Plaintiffs' complaint in its entirety.

3 Claim 1: The Arbitrator, based upon admissible evidence, determined that  
4 Defendant's actions amounted to fraud and is therefore exempt from discharge pursuant 11  
5 U.S.C. § 523(a)(2) and Bankruptcy Rule 4007.

6 **B. Background Facts**

7 On or about June 17, 2014, Plaintiff and Defendant entered into a written Outline of  
8 Architectural Services agreement whereby Defendant would provide Plaintiff with designs  
9 for a 32-unit affordable senior living apartment complex (the "Apartments") to be  
10 constructed at 7601 S. Western Avenue, Los Angeles, California 90047 (the "Premises").  
11 Defendant represented to Plaintiff that Defendant would prepare the plans for the  
12 construction of the 32-unit senior apartment complex at the Premises for \$147,000.00, that  
13 of which would include that the plans would be approved by the appropriate governmental  
14 agency, complete with engineering.

15 Thereafter, on or about July 14, 2014, Plaintiff and Defendant executed a Standard  
16 Form of Agreement Between Owner and Architect related to the construction of the  
17 Apartments to take place at the Premises. Plaintiff paid Defendant pursuant to the Standard  
18 Form of Agreement Between Owner and Architect.

19 Plaintiff reasonably relied on Defendant's representation that Defendant would  
20 complete the plans for 32 units of senior apartments, complete with engineering, and that  
21 all plans would be approved by the appropriate governmental agencies.

22 Defendant did not deliver the plans as required. Defendant failed to clear any of the  
23 permits required. Respondent failed to deliver appropriate plans and the plans that  
24 Defendant provided were rejected by the Los Angeles Department of Building and Safety  
25 ("LADBS") because:

- 26 (i) The plans did not provide for a mandatory set-back required by the LADBS;
- 27 (ii) The plans exceeded the maximum of three (3) stories;
- 28 (iii) The plans improperly provided for apartment balconies which would  
overhang the sidewalk;

1 (iv) The plans identified an incorrect address of 738 Los Angeles Street, miles  
2 from the Premises; and

3 (v) The plans were for 32 units, but only 27 were legally permitted.

4 Plaintiff requested that Defendant to modify the plans to correct the errors and  
5 resubmit them to the LADBS. Defendant refused to correct any of the deficiencies unless  
6 Defendant was paid an additional \$147,000.00.

7 Plaintiff commenced a civil action against Defendant in the Los Angeles County  
8 Superior Court, Central District, styled as *Gwen Nolan vs William K. Spencer et. al.* and  
9 bearing case number BC677750. At the Final Status Conference on December 11, 2018,  
10 Defendant informed the Court that the matter should be submitted to binding arbitration. As  
11 a result, Plaintiff and Defendant agreed to submit the matter to binding arbitration.

12 The arbitration was scheduled for July 22, 2019 and then continued to September 23,  
13 2019 at Defendant's request. Defendant thereafter failed to produce any witnesses, lay or  
14 expert, identified and produced no documents, and failed to cooperate with Plaintiff's  
15 discovery. Defendant made no further request for a continuance, did not appear at the  
16 binding arbitration and the binding arbitration occurred without Defendant's participation  
17 before the Honorable Suzanne G. Bruguera (Ret.) (the "Arbitrator"). Plaintiff prevailed in  
18 the arbitration claim against Defendant. In the arbitration award, the Arbitrator held that  
19 Defendant "defrauded [Plaintiff]" and "committed fraud in his conduct with Plaintiff." The  
20 Arbitrator further determined that Defendant's conduct was outrageous. While the  
21 Arbitrator found Defendant's conduct fraudulent and outrageous, the Arbitrator did not  
22 consider punitive damages because Plaintiff's arbitration claim did not request them.

23 Ultimately, Plaintiff was awarded \$152,250.00 in the Arbitration and has incurred  
24 additional sums in this instant adversarial action.

### 25 **C. Elements of Plaintiff's Claim**

26 In order to establish that Defendant's debt is non-dischargeable pursuant to Section  
27 513(a)(2)(A), Plaintiff must establish that: (1) Defendant made a representation; (2)  
28 Defendant knew at the time the representation was false; (3) Defendant made the  
representation with the intention and purpose of deceiving the creditor; (4) Plaintiff relied

1 on the representation; and (5) Plaintiff sustained damage as the proximate result of the  
2 representation. In re Apte, 96 F.3d 1319, 1322 (9th Cir. 1996); In re Kirsh, 973 F.2d 1454,  
3 1457 (9th Cir. 1992).

4 **D. Argument**

5 **1. Defendant made a representation to Plaintiff.**

6 Here, Defendant clearly made a representation to Plaintiff, insomuch that Defendant  
7 would prepare the plans for the Premises for \$147,000.00 and that the proposed plans  
8 would be approved by the appropriate governmental agency.

9 **2. Defendant knew at the time that the representation was made that**  
10 **it was false.**

11 Here, the sum total of Defendant's plans prepared for Plaintiff, insomuch that the  
12 plans so widely deviated from what Plaintiff desired and had communicated to Defendant,  
13 evinces that Defendant's representations were false when made to Plaintiff, and that  
14 Defendant was aware that the representations to Plaintiff were made with the intent to  
15 deceive Plaintiff and have Plaintiff commit to paying Defendant for what amounted to  
16 nothing and be still required to pay more in order to remedy the issues that lead to the  
LADBS' failure to approve the plans for the Premises.

17 Numerous deficiencies existed in Defendant's plans and were never approved by the  
18 LADBS, which was ultimately a material term, if not the most material of the Agreement  
19 itself. Building plans are of no benefit if the reviewing agency will not permit said plans to  
20 be built upon. The multiple defects identified by the LADBS related to Defendant's plans,  
21 identified above, were not trivial in nature and, to the contrary, were glaringly significant.  
22 The plans incorrectly identified the address being 738 Los Angeles Street, which is over a  
23 mile from the Premises; did not provide for a mandatory set-back required by the LADBS;  
24 exceeded the maximum of three (3) stories; improperly provided for apartment balconies  
25 which would overhang the sidewalk at the Premises; and Defendant's plans as presented  
26 were for 32 units, but only 27 were legally permitted.

27 Notably, these issues are not merely a difference in opinions between the architect  
28 and under no circumstance would any of the identified defects would not pass muster from  
LADBS' plan check. Based upon the number of violations, as well as the nature of the

1 violations themselves, when one takes into account Defendant's self-represented  
2 professional ability, the evident inference drawn is that Defendant was aware of the  
3 truthfulness (or lack thereof) of Defendant's representations to Plaintiff. Nothing in the  
4 evidence presented supports an inference that Defendant's representations were  
5 unintentional.

6 **3. Defendant made the representation with the intention and purpose**  
7 **of deceiving Plaintiff.**

8 Our Courts have held that intent can be inferred from the party's conduct. United  
9 States v. Cusino, 694 F.2d 185, 187 (9th Cir. 1982) (citing United States v. Beecroft, 608  
10 F.2d 753, 757 (9th Cir. 1979)), cert. denied, 461 U.S. 932 (1983). See also, In re Dakota,  
11 284 B.R. at 721 (citing to In re Anastas, 94 F.3d 1280 (9th Cir. 1996) As the Arbitrator  
12 correctly pointed out, the refusal of Defendant to correct his designs on the project and  
13 refusal to work without Plaintiff paying Defendant an additionally \$147,000.00 reveals the  
14 fraudulent nature of Defendant's representations made to Plaintiff in order to deceive  
15 Plaintiff as well as Defendant's knowledge that the previous representations to Plaintiff  
16 were false when made. Nothing contained in the evidence available supports the inference  
17 that the violations were based upon anything other than Defendant's plans. Moreover,  
18 taking into account Defendant's professional experience and the number, scope and nature  
19 of the violations that lead to Defendant's demand for an additional \$140,000 to correct the  
20 errors was intentional and as Defendant had planned.

21 **4. Plaintiff reasonably relied on Defendant's representations.**

22 Plaintiff's reliance on Defendant's representations was reasonable and justifiable;  
23 Defendant held himself out as a professional architect and Plaintiff was justified in relying  
24 on Defendant's representations. A person may justifiably rely on a representation "even if  
25 the falsity of the representation could have been ascertained upon investigation. In other  
26 words, negligence in failing to discover an intentional misrepresentation" does not defeat  
27 justifiable reliance. In re Eashai, 87 F.3d 1082, 1090 (9th Cir. 1996); In re Apte, 180 B.R.  
28 at 229 ("justifiable" reliance is a mixture of objective and subjective standards, which takes

1 into account knowledge and relationship of the parties themselves). Nothing at the time the  
2 representation was made could have reasonably lead to Plaintiff realizing the falsity of  
3 Defendant's representations.

4 Moreover, Defendant's false representations are the proximate cause of Plaintiff's  
5 damages. See, Field v. Mans, 516 U.S. at 61, 64. "A fraudulent misrepresentation is a legal  
6 cause of a pecuniary loss resulting from an action [...] in reliance upon it if, but only if, the  
7 loss might reasonably be expected to result from the reliance." See, Restatement (Second)  
8 of Torts, §548A. Here, Plaintiff's resulting damages are directly related to Plaintiff's  
9 reliance upon Defendant's representation and the damages Plaintiff complained of in the  
10 underlying action are those that an individual would expect to occur as a result of  
11 Defendant's fraudulent conduct.

12 **5. Plaintiff was damaged as a result.**

13 Plaintiff was damaged as a result of Defendant's fraudulent representation that  
14 Defendant would prepare the necessary plans and that the plans would be approved by the  
15 appropriate governmental agency. As a result of Defendant's representations, Plaintiff was  
16 deprived of the money that Plaintiff had paid Defendant, expecting to have received the  
17 plans as Defendant had represented.

18 **II. DEFENDANT'S COUNTERCLAIMS & AFFIRMATIVE DEFENSES**

19 **A. Summary of Defenses Defendant Plans to Pursue.**

20 Defendant did not plead any counterclaims against Plaintiff. Defendant has pled two  
21 (2) affirmative defenses, including: (1) "the finding of fraud in Defendant's conduct as  
22 articulated by the Arbitrator is not a basis for awarding damages to Plaintiff but rather it  
23 was a finding to support punitive damages which were not demanded by Plaintiff;" and (2)  
24 "Defendant performed his duties under the contract in good faith but the City of Los  
25 Angeles wanted changes made to the design; and once Defendant advised Plaintiff of this,  
26 Plaintiff decided to terminate the contract."

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28 ///

**1. Defendant's first affirmative defense ignores the principles of  
Section 523(a)(2)(A)**

Defendant attempts to obfuscate the intended implication of section 523(a)(2)(A). 11 U.S.C. 523(a)(2)(A) seeks to prevent a debtor from discharging a debt that is based upon the intentional wrongdoing of the debtor.

It is well-settled that "non-dischargeability due to fraud is a federal question, therefore a federal rather than state definition of fraud is to be used." In re Davis (Bankr. N.D. Fla. 1990) 115 B.R. 346, 349. Here, it is clear that the Arbitrator identified in the arbitration award that Defendant had obtained the money in question through fraud or fraudulent pretenses.

The Bankruptcy Code has long prohibited debtors from discharging liabilities incurred on account of their fraud, embodying a basic policy animating the Code of affording relief only to an "honest but unfortunate debtor." Cohen v. de la Cruz (1998) 523 U.S. 213, 217.

Section 523(a)(2)(A) of the Bankruptcy Code provides an exception from the discharge of any debt for money, property or services, to the extent such debt was obtained by false pretenses, a false representation, or actual fraud. 11 U.S.C. § 523(a)(2)(A). Nothing contained in Section 523(a)(2)(A) mandates that the cause of action for which the damages stemmed controls whether or not the debt is dischargeable, but whether the finder of fact determines that the complained of act on the part of the defendant/debtor was fraudulent or not.

Here, the Arbitrator clearly and correctly identified that Defendant's acts amounted to fraudulent conduct and the debt that Defendant is seeking to discharge is not the result of forthright but unfortunate conduct on the part of Defendant.

**2. Defendant's Affirmative Defense of Good Faith is controverted by  
that admissible evidence offered in support of Plaintiff's Claims**

By the virtue of this affirmative defense, Defendant "catch all" affirmative defense is inherently alleging that every act of Defendant was subjectively proper, given the facts presented. Defendant's attempt to present this as an issue where the "City of Los Angeles

1 wanted corrections to the design” is, at best, a mischaracterization of the issues presented  
2 and clearly misstates that which occurred by and between Plaintiff and Defendant that  
3 culminated in Plaintiff’s damages, the underlying civil action and arbitration that followed.

4 Despite Defendant’s contention that Plaintiff “terminated the contract” for no  
5 apparent reason, based upon the admissible evidence offered at the arbitration concerning  
6 the difference between what Defendant and what Plaintiff ultimately received, in addition  
7 that Plaintiff pay Defendant an additional \$140,000.00 before Defendant would correct the  
8 platitude of defects in the plans as prepared by Defendant, Defendant’s affirmative defense  
9 is wholly unsupported.

10 **III. ANTICIPATED EVIDENTIARY ISSUES**

11 Concurrent with Defendant’s substitution of counsel, Defendant has filed a Motion  
12 to Dismiss pursuant to Fed. R. Civ. P. Rule 12(c), currently set to be heard in conjunction  
13 with the Pretrial Conference in this matter.

14 **III. BIFURCATION OF ISSUES**

15 Neither party has requested bifurcation of any issues at this time.

16 **IV. DEMAND FOR JURY TRIAL**

17 No demand for a jury trial has been submitted by either Plaintiff or Defendant.

18  
19 Dated: February 9, 2021

NUSSBAUM APC

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22 By: Richard J. Uss  
23 Attorneys for Plaintiff Gwendolyn  
24 Nolan  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
27489 Agoura Rd., Ste. 102, Agoura Hills, CA 91301

A true and correct copy of the foregoing document entitled (*specify*): \_\_\_\_\_  
PLAINTIFFS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW \_\_\_\_\_

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*)

02/09/2021, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Carolyn A Dye (TR) - trustee@cadye.com, Daniel King - dking@theattorneygroup.com, United States Trustee (LA) - ustpreion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 02/09/2021, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

William K Spencer - 2330 E Del Mar #111, Pasadena, CA 91107

Hon Sheri Bluebond - Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1534 / Courtroom 1539  
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

02/09/2021 Shauna Wilcox

Date

Printed Name

Signature

